

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BELINDA A. MUNZ)	
Claimant)	
)	
VS.)	
)	
U.S.D. #381)	
Respondent)	Docket No. 1,019,195
)	
AND)	
)	
KASB WORKERS COMP. FUND, INC.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the February 4, 2011, Post Award Medical Award entered by Administrative Law Judge Pamela J. Fuller. This appeal has been placed on the summary docket for disposition without oral argument.

APPEARANCES

Lawrence M. Gurney of Wichita, Kansas, appeared for the claimant. Anton C. Andersen of Kansas City, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record reviewed by the Board is listed in the February 4, 2011, Post Award Medical Award.

ISSUES

Claimant initiated this claim by alleging a left shoulder injury due to a specific accident on October 30, 2001, followed by a series of traumas from repetitive use. The parties ultimately entered into a settlement agreement, which was approved on August 6, 2005, by Special Administrative Law Judge (SALJ) John Nodgaard. Under the terms of the settlement award, claimant retained the rights to seek review and modification and additional medical treatment. Claimant now requests additional medical treatment in this post-award proceeding.

In the February 4, 2011, Post Award Medical Award, the ALJ granted claimant's request for additional treatment. The ALJ held, in part:

The claimant's current complaints of pain are not solely related to any natural aging process or her day to day living activities. Part of her pain is due to her original injury and part due to degenerative processes. Dr. Fleske stated that generally the arthritic process begins due to an injury or can be genetic. There was no clear evidence of a genetic predisposition but there is clear evidence of an injury. Dr. Fleske stated that if the cortisone injections were working for the claimant, then it was reasonable to undergo another course of them. Based on the evidence presented, the claimant's request for medical treatment in the form of cortisone injections is hereby granted.¹

Respondent requests the Board to reverse the ALJ's Post Award Medical Award of additional medical treatment as claimant failed to prove her present need for treatment is directly related to her work-related injury. Moreover, respondent argues that claimant's current need for medical treatment is directly related to degenerative changes that exist in both shoulders and are unrelated to her injury at work. Finally, respondent maintains that both claimant's current employment and her normal activities of daily living aggravate her underlying injury. Consequently, respondent contends the arthritis in claimant's shoulders, which may be from genetic predisposition, is causing her current complaints but that such arthritis is unrelated to her injury at work.

Claimant argues the February 4, 2011, Post Award Medical Award should be affirmed. Claimant maintains her present symptoms are due to the natural progression of a degenerative process superimposed upon her work-related injury and, therefore, those symptoms are directly related to her work injury.

The only issue before the Board in this post-award proceeding is whether claimant has established her present need for medical treatment is related to the left shoulder injury she sustained at work for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant, a school teacher, fell on October 30, 2001, when she tripped while ascending stairs. She attempted to break her fall by extending her left arm and consequently experienced severe left shoulder pain. After a course of conservative

¹ P.A.M. Award (Feb. 4, 2011) at 3.

medical treatment, claimant underwent several surgical procedures; including, an arthroscopic subacromial decompression in January 2002, a second arthroscopic debridement in April 2003, and another arthroscopic subacromial decompression in January 2004. In addition, claimant also had a left shoulder manipulation in 2002 to address residual adhesive capsulitis in her shoulder.

Claimant was released from medical care in June 2004. In August 2005, the parties entered into a settlement agreement in which claimant retained the right to seek additional medical treatment.

Attached to the settlement hearing transcript is the April 5, 2005, medical report from Dr. C. Reiff Brown, who evaluated claimant at the ALJ's request. Dr. Brown concluded that claimant had a sprain and probable capsular tear in her left shoulder from her accident at work. Moreover, the doctor proposed permanent work restrictions for claimant. The report concludes:

In my opinion, this patient suffered sprain and probably a capsular tear in the injury that she describes. She has had multiple surgical procedures in an attempt to reduce her symptoms, none of which have been successful. She has ongoing rather severe restriction of range of motion, pain in the shoulder joint and weakness of the shoulder. She also has a severe area of tenderness in the lower portion of the sternomastoid muscle that I cannot explain. This has not been treated other than by some physical therapy which was not helpful and it seems to me that it is severe enough to warrant additional attention such as steroid injections, stretching exercises, etc. Otherwise she is, in my opinion, at maximum medical benefit. . . . It will be necessary for her to permanently avoid use of the left hand above chest level and for reach away from the body more than 12 inches. Lifting with the left hand between waist and chest level will have to be restricted at 10 pounds occasionally and 5 pounds frequently.²

Dr. Pedro A. Murati's November 17, 2004, medical report was also attached to the settlement hearing transcript. Dr. Murati, likewise, recommended permanent restrictions on claimant's activities, including no heavy grasping with the left hand, no working above the left shoulder, no working more than 18 inches from the body, and avoiding placing the neck in awkward positions. The doctor also limited claimant's frequent lifting, pushing, and pulling to 20 pounds maximum and occasional lifting to 35 pounds maximum. Dr. Murati did not want claimant to lift more than 35 pounds any time.

In November 2006, claimant filed her first request for post-award medical treatment for her left shoulder pain. Consequently, Dr. Leonard Fleske, who had performed claimant's first two arthroscopic shoulder surgeries, was authorized as claimant's treating

² S.H. Trans., Exhibits.

physician. Once again Dr. Fleske operated on claimant's left shoulder and afterwards prescribed both therapy and cortisone injections.

Claimant filed this second request for post-award medical treatment in October 2010 to request additional cortisone injections. She indicated at the November 2010 hearing that her left shoulder pain has increased in frequency since her last medical treatment. She testified in part:

Well, right now, the biggest pain is that it pops frequently in the -- into the joint; and what it does is every so often it catches something and, like, a nerve or something and just hurts a lot. And then pain radiates down through my arm. But I have pain clear from, oh, right across my shoulder right here and down in through the cuff of my shoulder down through my -- down my arm.³

. . . .

And I'll go where there's just a pain of about a level five and then there's days that it's way off the chart. Okay?⁴

Claimant, who is right-hand dominant, also testified in November 2010 that her left shoulder pain is constant despite being very careful to protect the shoulder. She explained that her present job as a middle-school teacher was not physically demanding and merely temporarily increased her shoulder pain. She denies that she has further injured her shoulder. Claimant testified in part:

Q. (Mr. Wenger) In the last sentence there he [Dr. Fleske] said, "I believe it is continuing, but I would agree that her daily activities and working do aggravate it."

A. (Claimant) Yeah. Because he feels just every day things aggravate it, you know. Like, see, right now sitting here at this desk, it's a little higher than -- 'cause I'm short. It causes my shoulder to go up a little bit. So it causes a little bit more pain. So I drop it frequently. But that aggravates it, yes. That's a daily thing. Okay? I'll find that I will go to a student's desk and I will help the student. I might lean over and lean on my left shoulder or left hand. I notice it causes pain. I stop and do something. These are just things that happen, I think.⁵

Claimant maintains she has done nothing to re-injure her shoulder either at work or outside work. Moreover, she maintains that she has not violated the work restrictions

³ P.A.H Trans. (Nov. 5, 2010) at 8.

⁴ *Ibid.* at 9.

⁵ *Ibid.* at 20-21.

recommended by Dr. Brown. Finally, claimant testified the cortisone injections that Dr. Fleske gave her following her last arthroscopic procedure helped alleviate her shoulder pain for approximately six months and for that reason she now requests additional injections.

The only medical expert to testify in this post-award proceeding is Dr. Fleske, a board-certified orthopedic surgeon. He first found early degenerative changes (adhesions and chondromalacia) in the left shoulder when he performed claimant's most recent arthroscopic procedure. Dr. Fleske explained that both of claimant's shoulders are becoming arthritic, with the right being worse than the left. Nonetheless, the doctor believes that claimant's need for pain relief in the left shoulder is directly related to her injury at work. The doctor testified in pertinent part:

Q. (Mr. Gurney) -- the \$500 question, I guess, is: Is her continuing need for the treatment that she is requesting and that you have provided, the pain relief kind of treatment, is that causally related to her original accident back in 2001, in your opinion?

A. (Dr. Fleske) I think it is. The reason is is that she's had two different surgeons, Dr. Prochaska and myself, that have scoped her shoulder. There's never been really much in the way of the rotator cuff. It has just primarily been stiffness -- and which is kind of an early sign of arthritis -- pain, loss of motion. I pretty much told her at the last scope that there's really nothing else to do with the scopes. It's just an arthritic process. I believe when I scoped it the last time -- I think that's actually her fourth scope -- she had adhesions and a term we call chondromalacia, which is just a roughing of the ball. It's deteriorating and it's just a process that occurs.⁶

And the doctor testified that additional injections would be appropriate treatment if they provided claimant pain relief for six months.⁷

Respondent maintains that it is unlikely claimant's need for additional medical treatment is related to her injury at work because both of claimant's shoulders now have an evolving degenerative process and that claimant's right shoulder is now probably worse than the left. Dr. Fleske, however, testified that claimant's work-related injury is at least partly responsible for her ongoing pain. The doctor explained, as follows:

Q. (Mr. Gurney) Okay. Well, to make this as easy as we can for the Judge, I mean, I'm not trying to put words in your mouth or anything else, but just to be as candid as you could with the Judge as if he were sitting here without the court reporter of what do I do here, in your opinion, does this stem from the original injury

⁶ Fleske Depo. (Dec. 21, 2010) at 6.

⁷ *Ibid.* at 6-7.

or is this just degenerative changes that she was likely to undergo one way or another absent the injury?

A. (Dr. Fleske) I think -- I think it can be both. I think she was always going to have some pain from her shoulder because I -- I did a couple of scopes and I said no more. Then Prohaska when he scoped it, he didn't see any arthritis and so she continued to have pain there. Then when I scoped her, now I see degenerative changes, so I think there's a separate element of arthritic process as well as the previous. Going forward from here, sometimes the arthritis can overwhelm what was the other process. So the original thing, I think, continues. I can't tell you if it's increasing. I think it's the arthritis that is increasing and perhaps both of those together make her symptoms a lot worse. So that's kind of the best way I can answer because there's really no mention of arthritis in the previous stuff.⁸

Dr. Fleske was not asked what effect, if any, the multiple arthroscopies had on claimant developing arthritis in her left shoulder.

As indicated above, the ALJ found that claimant had satisfied her burden of proof and, therefore, she was entitled to receive additional cortisone injections in her left shoulder at respondent's expense. The Board agrees. Although the evidence establishes that claimant now has arthritis in her left shoulder, Dr. Fleske's medical opinions are uncontradicted that claimant has ongoing pain due to her work-related accident and that her present need for medical treatment is related to that accident. The Board notes that claimant has experienced left shoulder pain for years that ultimately resulted in four arthroscopic procedures. In other words, claimant's left shoulder pain complaints did not recently occur. Indeed, claimant's left shoulder pain began long before Dr. Fleske noted arthritis in her left shoulder.

In summary, the Board finds claimant has established that it is more probably true than not that her present need for additional medical treatment is directly related to her work-related injury.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁹ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

⁸ *Ibid.* at 17-18.

⁹ K.S.A. 2009 Supp. 44-555c(k).

AWARD

WHEREFORE, it is the decision of the Board that the Post Award Medical Award of Administrative Law Judge Pamela J. Fuller dated February 4, 2011, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May, 2011.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
 Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
 Pamela J. Fuller, Administrative Law Judge